

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DARETHA BRAZIEL, et al.,

Plaintiffs,

Case No. 1:21-cv-960

v.

Hon. Hala Y. Jarbou

GRETCHEN WHITMER, et al.,

Defendants.

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**ORDER**

In accordance with the opinion entered this date:

**IT IS ORDERED** that the report and recommendation (“R&R”) of the magistrate judge (ECF No. 173) is **ADOPTED IN PART** and **REJECTED IN PART** as the opinion of the Court. The R&R is **REJECTED** insofar as it concludes (1) that Plaintiffs fail to state a federal claim against Defendants Muhammad, O’Malley, and the City of Benton Harbor; and (2) that the Court should decline to exercise supplemental jurisdiction over Plaintiffs’ state-law claims because the Court will dismiss all of Plaintiffs’ federal claims. Instead, the Court concludes that Plaintiffs state a substantive due process claim against Defendants Muhammad, O’Malley, and the City of Benton Harbor. The Court will decline to exercise supplemental jurisdiction for different reasons.

**IT IS FURTHER ORDERED** that the Rule 12(b)(1) motion to dismiss by Defendants Clark, Gordon, Hertel, Oswald, and Whitmer (collectively, the “State Defendants”) (ECF No. 141) is **DENIED**.

**IT IS FURTHER ORDERED** that the Rule 12(b)(6) motion to dismiss by the State Defendants (ECF No. 145) is **GRANTED**. Accordingly, Defendants Clark, Gordon, Hertel, Oswald, and Whitmer are **DISMISSED** for failure to state a claim.

**IT IS FURTHER ORDERED** that the Rule 12(b)(1) motion to dismiss by Defendants Muhammad, O'Malley, Watson, Mitchell, and the City of Benton Harbor (collectively, the "City Defendants") (ECF No. 147) is **DENIED**.

**IT IS FURTHER ORDERED** that the Rule 12(b)(6) motion to dismiss by the City Defendants (ECF No. 150) is **GRANTED IN PART** and **DENIED IN PART** as set forth in the opinion. Accordingly, Defendants Watson and Mitchell are **DISMISSED** for failure to state a claim.

**IT IS FURTHER ORDERED** that the motion to dismiss by Defendant Elhorn Engineering Company (ECF No. 139) is **GRANTED** insofar as it asks the Court to decline to exercise supplemental jurisdiction over Plaintiffs' state law claims.

**IT IS FURTHER ORDERED** that Plaintiffs' claims arising under state law are **DISMISSED WITHOUT PREJUDICE** because the Court declines to exercise supplemental jurisdiction over them. Accordingly, Defendants Elhorn Engineering Company and F&V Operations and Resource Management, Inc. are **DISMISSED**.

In light of the foregoing, the only claims remaining are: (1) the substantive due process claim in Count I against Defendants Muhammad and O'Malley; and (2) the *Monell* claim in Count II against the City of Benton Harbor. All other claims and Defendants have been dismissed.

Dated: September 28, 2023

/s/ Hala Y. Jarbou

HALA Y. JARBOU

CHIEF UNITED STATES DISTRICT JUDGE